



Single Bench

cf 103

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

W.P. No. 4582 /2004

PETITIONERS

- : 1. Kesmait Bai wd/o Late Lakhan Singh, age 73 years, Occupation Agriculture, r/o village Aara Kathaldand, Tehsil & District Jashpur, C.G.
2. Tara Devi d/o Late Lakhan Singh, age 40 years, Occupation-Service r/o village Bhagalpur, Tehsil & District Surguja, C.G.
3. Gulab Singh s/o Late Nakul Singh, age 48 years.
4. Guthlu Singh s/o Late Nakul Singh age 40 years.
5. Ramkrishna Singh s/o Late Nakul Singh, age 35 years.
6. Arjun Singh s/o Late Nakul Singh, age 30 years.

No. 3 to 6 all r/o Aara, Kathaldand, Tehsil & Distt. Jashpur, C.G.

(PLAINTIFFS)

V E R S U S

RESPONDENTS

- : 1. Sukhmani Bai wd/o Late Karampal Singh, age 52 years.
2. Rajkumar Singh s/o Late Karampal Singh, age 36 years.
3. Shiv Kumar Singh s/o Late Karampal Singh, age 28 years.
4. Dharampal Singh s/o Late Budhu Singh, age 55 years.

All r/o village Aara Kathaldand, Kastumba, Tehsil & District Jashpur, C.G.

P.R. No. 4566/17
Presented by Shri. A.K. Prasad
dated 23-11-04



23/11/04
Bilaspur

Cum.

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5. The State of Chhattisgarh,
through Collector, District
Jashpur, C.G.

(DEFENDANTS)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

आदेश पत्रक

मामला क्रमांक

JP No. 4582/04
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	05.01.2005 Shri A.K. Prasad, counsel for the petitioners. Smt. F. Mirza, Panel Lawyer for the State/respondent No.5. By this petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 11.10.2004 (Annexure P-6) passed by learned Civil Judge Class-II, Jashpurnagar, District Jashpur whereby the application filed by the respondents herein was allowed and it was ordered that since the names of Ramkrishna Singh & Dilip Kumar Sai, whose affidavits were filed by the petitioners as evidence, were not listed witnesses and without showing sufficient cause that why their names were not included in the list of witnesses they could not be examined. I have heard the learned counsel for the parties. Learned counsel for the petitioners submitted that as far as Ramkrishna Singh is concerned he himself is a plaintiff and without filing list of witnesses within his own rights he is entitled to get himself examined in support of his case and as far as Dilip Kumar Sai is concerned, he is also material witness and learned trial court ought to have rejected the application filed by the defendants/respondents herein. Having heard learned counsel for the petitioner and having regard to the law on the point, as far as the question of Dilip Kumar Sai is concerned, it is an admitted position that DilipKumar Sai was not the listed witness and for examining the non-listed witnesses the plaintiff is required to undertake the recourse available under sub-rule (3) of Rule 1 of Order 16 which envisages that <i>"the Court may, for reasons to be recorded, permit the party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list</i>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

सामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<i>referred to in sub-rule(1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list".</i> It is an admitted position that name of Dilip Kumar was not included in the list of witnesses, no application was filed on behalf of the petitioners showing sufficient cause that why his name was not mentioned in the list of witnesses and without obtaining any order under sub-rule (3) of Rule 1 of Order 16 the petitioners have filed his affidavit. Therefore, to the extent of witness Dilip Kumar Sai, there is no illegality or infirmity in the order passed by the learned trial court. But other point raised by learned counsel for the petitioner has substance because Ramkrishna is himself the plaintiff No.5 in the suit and any plaintiff can examine himself as a witness even without filing any list of witnesses within his own rights. Therefore, to the extent of Ramkrishan, the impugned order is prima-facie illegal, as Ramkrishan himself is one of the plaintiffs in the suit and he can examine himself as a witness even without filing list of witnesses. Accordingly, the order dated 11.10.2004 to the extent of Ramkrishna Singh is set aside and it is directed that if petitioner No.5- Ramkrishna Singh wants to examine himself as a witness then he be allowed. With above observation and direction, the petition stands disposed of. Consequently, M.W.P. No.4921/04 & I.A. No.9176/04 also stand disposed of. Certified copy as per rules.	
		Sd/- L.C. Bhadoo Judge

Roshan/-

8/10/05